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Idaho Bar No. 6213  
COUNSEL FOR PLAINTIFF THE UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA,

Plaintiff,

v.

DAVISCO FOODS INTERNATIONAL, INC.,  
d/b/a Jerome Cheese Company,

Defendant.

Case No. 1:11-cv-00458-EJL

DAVISCO FOODS INTERNATIONAL, INC.,  
d/b/a Jerome Cheese Company,

Counter Plaintiff,

v.

UNITED STATES OF AMERICA, et al.

Counter Defendants.

**CONSENT DECREE**

Whereas Plaintiff United States of America, on behalf of the United States Environmental Protection Agency, has filed a complaint in this action asserting claims against Defendant Davisco Foods International, Inc. d/b/a Jerome Cheese Company pursuant to Sections 301 and 309 of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1311 and 1319, at its cheese and whey-isolation facility located in Jerome, Idaho;

Whereas the Complaint alleges that Defendant is liable for penalties pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, stemming from its violations of certain limitations and conditions set forth in its National Pollutant Discharge Elimination System ("NPDES") permit No. ID-002760-0 issued to it by EPA, effective October 1, 2001, pursuant to Section 402 of the CWA, 33 U.S.C. § 1412;

Whereas the Complaint alleges that Defendant violated the Permit beginning in July 2006 and continuing through August 2010, at which time Defendant came into compliance with the Permit;

Whereas the violations alleged in the Complaint consist primarily of discharges of phosphorus, which exceeded the Permit limit and averaged 1.192 pounds per day over the period of alleged violations, with an alleged maximum daily discharge of 6.71 pounds, where the total phosphorus loading allocated to all point sources in this reach of the Snake River was 2,092.03 pounds per day;

Whereas Defendant does not admit any factual allegations or any liability to the United States arising out of the transactions or occurrences alleged in the Complaint or asserted in this Consent Decree except as provided in Section I (Jurisdiction and Venue); and

Whereas the Parties recognize, and this Court by entering this Decree finds, that this Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties and that this Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I (Jurisdiction and Venue), and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

#### I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355 and Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and over the Parties. Venue lies in the District of Idaho pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), because Defendant is located in this judicial district and the violations alleged in the Complaint are alleged to have occurred in this judicial district. For purposes of this Decree, or any action to enforce this Decree, Defendant consents to this Court's jurisdiction over this Decree or such action and over Defendant, and consents to venue in this judicial district.

2. For purposes of this Decree only, Defendant agrees that the Complaint states claims upon which relief may be granted pursuant to Sections 301 and 309 of the CWA, 33 U.S.C. §§ 1311 and 1319.

#### II. APPLICABILITY

3. The obligations of this Decree apply to and are binding upon the United States and upon Defendant and any successors, assigns, or other entities or persons otherwise bound by applicable law.

4. Although this Decree does not prevent Defendant from transferring ownership or operation of the Facility, no transfer of ownership or operation of the Facility shall relieve Defendant of its obligation to ensure that the terms of this Decree are implemented.

5. In any action to enforce this Decree, Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Decree.

### III. DEFINITIONS

6. Terms used in this Decree that are defined in the CWA or in regulations promulgated pursuant to the CWA shall have the meanings assigned to them in the CWA or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Decree, the following definitions shall apply:

- a. "Complaint" shall mean the complaint filed by the United States in this action.
- b. "Day" shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run through the next business day.
- c. "Defendant" shall mean Daisco Foods International, Inc. d/b/a Jerome Cheese Company.
- d. "EPA" shall mean the United States Environmental Protection Agency and any of its successor departments or agencies.
- e. "Effective Date" shall have the definition provided in Section XIII (Effective Date).



- f. "Facility" shall mean the cheese and whey-isolation facility owned and operated by Defendant and located at 47 West 100 South, Jerome, Idaho 83338.
- g. "Interest" shall mean the rate specified in 28 U.S.C. § 1961.
- h. "Paragraph" shall mean a portion of this Decree identified by an arabic numeral.
- i. "Parties" shall mean Plaintiff and Defendant.
- j. "The Permit" shall mean NPDES permit No. ID-002760-0 issued by EPA to Defendant for the Facility pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and any modification or renewal thereof.
- k. "Section" shall mean a portion of this Decree identified by a roman numeral.
- l. "United States" shall mean the United States of America, acting on behalf of EPA.

#### IV. CIVIL PENALTY

- 7. Within thirty (30) Days after the Effective Date, Defendant shall pay the sum of three hundred and four thousand dollars (\$304,000) as a civil penalty, together with interest accruing from November 7, 2012, at the rate specified in 28 U.S.C. § 1961 as of November 7, 2012.
- 8. Defendant shall pay the civil penalty due by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with written instructions to be provided to Defendant, following lodging of this Decree, by the Financial Litigation Unit of the U.S. Attorney's Office for the District of Idaho. On the same day as payment, Defendant shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal

letter, which shall state that the payment is for the civil penalty owed pursuant to this Decree in United States v. Davisco Foods International, Inc., and shall reference civil action number 1:11-cv-00458-EJL and DOJ case number 90-5-1-1-09859, to the United States in accordance with Section XII (Notices); by email to [acctsreceivable.CINWD@epa.gov](mailto:acctsreceivable.CINWD@epa.gov); and by mail to:

EPA Cincinnati Finance Office  
26 Martin Luther King Drive  
Cincinnati, Ohio 45268

9. Defendant shall not deduct any penalties paid under this Decree pursuant to this Section or Section VI (Stipulated Penalties) in calculating its federal income tax.

#### V. COMPLIANCE REQUIREMENTS

10. Defendant shall comply with all conditions and limitations in the Permit.

#### VI. STIPULATED PENALTIES

11. Defendant shall be liable for stipulated penalties in the amounts indicated below to the United States for violations of this Decree, except as provided by Section VIII (Force Majeure).

12. Late Payment of Civil Penalty. If Defendant fails to pay the civil penalty or associated interest required to be paid under Section IV (Civil Penalty) when due, Defendant shall pay a stipulated penalty of \$5,000 per Day for each Day that the payment is late plus Interest as required by Paragraph 7.

13. The following stipulated penalties shall accrue per violation for each violation of an effluent limitation in the Permit:

a. Violations of Daily Limits:

<u>Penalty Per Violation Per Day</u>	<u>Number of Violations</u>
\$275	1st through 20th violation
\$525	21st through 40th violations
\$1,000	41st and additional violations

b. Violations of Monthly Average Limits: \$3,000 per monthly violation.

14. The following stipulated penalties shall accrue per violation per day for each violation of non-effluent requirements in the Permit including monitoring and reporting violations:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$200	1st through 20th violations
\$350	21st through 40th violations
\$500	41st and additional violations

15. Defendant shall pay any stipulated penalty within thirty (30) Days of receiving the United States' written demand, except as provided by Paragraph 17 below.

16. The United States may in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due to it under this Decree.

17. Stipulated penalties shall continue to accrue as provided in Paragraphs 13-15 during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, Defendant shall pay accrued penalties determined to be owing, together with Interest, to the United States within thirty (30) Days of the date of such agreement or the receipt of EPA's decision or order.

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Defendant shall pay all accrued penalties determined by this Court to be owing, together with Interest, within sixty (60) Days of receiving this Court's decision or order, except as provided in subparagraph c below.

c. If any Party appeals this Court's decision, Defendant shall pay all accrued penalties determined to be owing, together with interest, within fifteen (15) Days of receiving the final appellate court decision and the expiration of all relevant appeal periods.

18. If Defendant fails to pay stipulated penalties according to the terms of this Decree, Defendant shall be liable for Interest, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for Defendant's failure to pay any stipulated penalties.

19. Subject to the provisions of Section X (Effect of Settlement/Reservation of Rights), the stipulated penalties provided for in this Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for Defendant's violation of this Decree or applicable law. Where a violation of this Decree is also a violation of the CWA, Defendant shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

#### VII. INFORMATION COLLECTION AND RETENTION

20. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry into the Facility, at all reasonable times and upon presentation of credentials, to:

- a. monitor the progress of activities required under this Decree;
- b. verify any data or information Defendant submitted to the United States under this Decree;
- c. obtain samples;
- d. obtain documentary evidence, including photographs and similar data; and



e. assess Defendant's compliance with this Decree.

21. Upon request, Defendant shall provide splits of any samples taken by Defendant pursuant to this Decree to EPA or its authorized representatives. Upon request, EPA shall provide Defendant splits of any samples taken by EPA or its representatives, contractors or consultants.

22. From the Effective Date until five (5) years after the termination of this Decree, Defendant shall retain and, to the extent applicable to the data gathered under this Decree, shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Defendant's performance of its obligations under this Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States, Defendant shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

23. Defendant shall notify the United States at least ninety (90) Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States, Defendant shall deliver any such documents, records, or other information to EPA. Defendant may assert that certain documents, records, or other information is privileged under the attorney-client privilege, work-product privilege or any other privilege recognized by federal or State law. If Defendant asserts such a privilege as a basis for withholding documents, it shall provide the following in a log: (i) the title of the document, record, or information; (ii) the date of the document, record, or

information; (iii) the name and title of each author of the document, record, or information; (iv) the name and title of each addressee and recipient; (v) a description of the subject of the document, record, or information; and (vi) the privilege asserted by Defendant. However, no documents, records, or other information, or copies thereof, created or generated pursuant to the requirements of this Decree shall be withheld on grounds of privilege.

24. Defendant may assert that information required to be provided under this Section, or the United States collects under this Section, is protected as Confidential Business Information ("CBI") under 40 C.F.R. Part 2. As to any information that Defendant seeks to protect as CBI, Defendant shall follow the procedures set forth in 40 C.F.R. Part 2.

25. This Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal laws, regulations, or permits, nor does this Decree limit or affect any duty or obligation of Defendant to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

#### VIII. FORCE MAJEURE

26. "Force Majeure," for purposes of this Decree, is defined as any event arising from causes beyond the control of Defendant, of any entity controlled by Defendant, or of Defendant's contractors, that delays or prevents the performance of any obligation under this Decree despite Defendant's best efforts to fulfill the obligation. The requirement that Defendant exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any such event (i) as it is occurring and (ii) after it has occurred to prevent or minimize any resulting delay to the greatest extent

possible. "Force Majeure" does not include Defendant's financial inability to perform any obligation under this Decree.

27. If any event occurs or has occurred that may delay the performance of any obligation under this Decree, Defendant shall provide notice orally or by electronic or facsimile transmission to EPA within seventy two (72) hours of when Defendant first knew that the event might cause a delay. Within seven (7) Days thereafter, Defendant shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendant's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Defendant, such event may cause or contribute to an endangerment to public health, welfare, or the environment. Defendant shall include with any notice documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Defendant from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Defendant shall be deemed to know of any circumstance of which Defendant, any entity controlled by Defendant, or Defendant's contractors knew or should have known.

28. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA



will notify Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

29. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Defendant in writing of its decision.

30. If Defendant elects to invoke the dispute resolution procedures set forth in Section IX (Dispute Resolution), it shall do so no later than fifteen (15) Days after receipt of EPA's notice. In any such proceeding, Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendant complied with the requirements of Paragraphs 26 and 27. If Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Defendant of the affected obligation of this Decree identified to EPA and this Court.

#### IX. DISPUTE RESOLUTION

31. Unless otherwise expressly provided for in this Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Decree. Defendant's failure to seek resolution of a dispute under this Section shall preclude Defendant from raising any such issue as a defense to an action by the United States to enforce any obligation of Defendant arising under this Decree.

32. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Decree shall first be the subject of informal negotiations between the Parties. The dispute shall be considered to have arisen when Defendant sends the United States a written notice of dispute ("Notice of Dispute"). Such Notice of Dispute shall state clearly the matter in dispute.



The period of informal negotiations shall not exceed twenty (20) Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations within the informal negotiation period then the position advanced by the United States shall be considered binding unless, within thirty (30) Days after the conclusion of the informal negotiation period, Defendant invokes the formal dispute resolution procedures as set forth below.

33. Formal Dispute Resolution. Defendant may invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written statement of position ("Statement of Position") regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Defendant's position and any supporting documentation relied upon by Defendant.

34. The United States shall serve its Statement of Position within forty-five (45) Days of receipt of Defendant's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Defendant, unless Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.

35. Judicial Review. Defendant may seek judicial review of the dispute by filing with this Court and serving on the United States, in accordance with Section XII (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within ten (10) Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendant's position on the matter in dispute,

including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of this Decree. The United States shall respond to Defendant's motion within the time period allowed by the Local Rules of this Court. Defendant may file a reply memorandum consistent with the Local Rules.

36. Standard of Review. In any dispute brought under Paragraph 35, Defendant shall bear the burden of demonstrating that its position complies with this Decree.

37. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant under this Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 17. If Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VI (Stipulated Penalties).

#### X. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

38. This Decree resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action through August 31, 2010.

39. The United States reserves all legal and equitable remedies available to enforce the provisions of this Decree, except as expressly stated in Paragraph 38. This Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the CWA or implementing regulations, or under other federal laws, regulations, or permit conditions, except as expressly stated in Paragraph 38. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public

health or welfare or the environment arising at, or posed by, Defendant's Facility, whether related to the violations addressed in this Decree or otherwise.

40. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to the Facility or Defendant's violations, Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 38.

41. This Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Defendant is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; Defendant's compliance with this Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Decree, warrant or aver in any manner that Defendant's compliance with any aspect of this Decree will result in compliance with provisions of the CWA, 33 U.S.C. §§ 1311 *et seq.*, or with any other provisions of federal, State, or local laws, regulations, or permits.

42. This Decree does not limit or affect the rights of Defendant or of the United States against any third parties, not party to this Decree, nor does it limit the rights of third parties, not party to this Decree, against Defendant, except as otherwise provided by law.

43. This Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Decree.



XI. COSTS

44. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendant if the United States is the prevailing party in an action pursuant to this Decree to collect such amounts.

XII. NOTICES

45. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Decree, they shall be made in writing and mailed to the applicable address set forth below:

Notices and Submissions to the United States: Where this Decree requires that notices and submissions are to be made to the United States they shall be made to the U.S. Department of Justice and EPA. Where this Decree requires that notices and submissions are to be made to EPA, they need only be sent to EPA.

To the United States:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
Box 7611 Ben Franklin Station  
Washington, D.C. 20044-7611  
Re: DOJ No. 90-5-1-1-09859

To EPA:

Chae Park  
NPDES Compliance Officer  
Environmental Protection Agency, Region 10  
1200 Sixth Avenue  
Seattle, WA 98101

To Defendant:



Legal Services  
Davisco Foods International, Inc.  
704 N. Main Street  
Le Sueur, MN 56058

and

Peter Barton, Esq.  
Givens Pursley LLP  
601 W. Bannock St.  
Boise, ID 83702

46. Any Party may, by written notice to the other Party, change its notice recipient or information provided above.

47. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Decree or by mutual agreement of the Parties in writing.

#### XIII. EFFECTIVE DATE

48. The Effective Date of this Decree shall be the date upon which this Decree is entered by this Court or a motion to enter this Decree is granted, whichever occurs first, as recorded on this Court's docket.

#### XIV. RETENTION OF JURISDICTION

49. This Court shall retain jurisdiction over this case until termination of this Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Section IX (Dispute Resolution) and Section XV (Modification), or effectuating or enforcing compliance with the terms of this Decree.

XV. MODIFICATION

50. The terms of this Decree may be modified by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by this Court. Any extension of deadlines within this Decree for not more than ninety (90) Days shall be considered a non-material change to this Decree.

51. Any disputes concerning modification of this Decree shall be resolved pursuant to Section IX (Dispute Resolution); provided, however, that, instead of the burden of proof provided and standard of review provided under Paragraph 36, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XVI. TERMINATION

52. After Defendant has maintained substantial compliance with this Decree and the Permit for a period of three (3) years, and has paid the civil penalty and any accrued stipulated penalties as required by this Decree, Defendant may serve upon the United States a request for termination ("Request for Termination"), stating that Defendant has satisfied those requirements, together with any supporting documentation.

53. Following receipt by the United States of Defendant's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendant has substantially complied with the requirements for termination of this Decree. If the United States agrees that this Decree may be terminated, the Parties shall submit, for this Court's approval, a joint stipulation terminating this Decree.

54. If the United States does not agree that this Decree may be terminated, Defendant may invoke Dispute Resolution under Section IX (Dispute Resolution). However, Defendant shall not seek Dispute Resolution of any dispute regarding termination under this Section until sixty (60) Days after service of its Request for Termination.

#### XVII. PUBLIC PARTICIPATION

55. This Decree shall be lodged with this Court for a period of not less than thirty (30) Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding this Decree disclose facts or considerations indicating that this Decree is inappropriate, improper, or inadequate. Defendant consents to entry of this Decree without further notice and agrees not to withdraw from or oppose entry of this Decree by this Court or to challenge any provision of this Decree, unless the United States has notified Defendant in writing that it no longer supports entry of this Decree.

#### XVIII. SIGNATORIES/SERVICE

56. Each undersigned representative of Defendant and the Deputy Chief of the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Decree and to execute and legally bind the Party he or she represents to this document.

57. This Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendant agrees to accept service of process by mail to the addresses in Section XII (Notices) with respect to all matters arising under or relating to this Decree and to waive the

formal service requirements set forth in Federal Rules of Civil Procedure 4 and 5 and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XIX. INTEGRATION

58. This Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. No other document, nor any representation, inducement, agreement, understanding, or promise constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XX. FINAL JUDGMENT

59. Upon approval and entry of this Decree by this Court, this Decree shall constitute a final judgment of this Court as to the United States and Defendant. This Court finds that there is no just reason for delay and, therefore, enters this judgment as a final judgment under Federal Rules of Civil Procedure 54 and 58.

Dated and entered this 12 day of July, 2013.


The Honorable Edward J. Lodge

  
UNITED STATES DISTRICT JUDGE  
District of Idaho



FOR THE UNITED STATES OF AMERICA:

Date: 05-24-2013

  
ELLEN MAHAN (Thomas A. Mariani, Jr.)  
Deputy Chief  
Environmental Enforcement Section  
Environment and Natural Resources  
Division  
U.S. Department of Justice

Date: 5-28-2013

  
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[Syrena.Hargrove@usdoj.gov](mailto:Syrena.Hargrove@usdoj.gov)  
Idaho Bar No. 6213

FOR THE UNITED STATES OF AMERICA (Continued)

Date: May 8 2013


  
ALLYN L. STERN  
Regional Counsel  
U.S. Environmental Protection Agency Region 10

Date: 7 May 2013

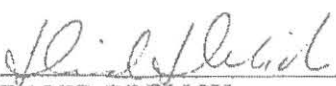
  
JENNIFER BYRNE  
Assistant Regional Counsel  
U. S. Environmental Protection Agency Region 10  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101  
(206) 553-0050

FOR THE UNITED STATES OF AMERICA (Continued)

Date: 5-15-13

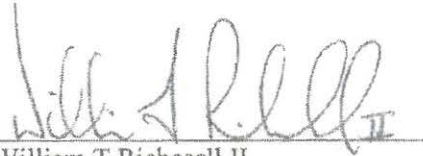
  
\_\_\_\_\_  
MARK POLLINS  
Director, Water Enforcement Division  
U.S. Environmental Protection Agency

Date: 5/8/13

  
\_\_\_\_\_  
DAVID DRELICH  
Attorney  
Office of Enforcement and Compliance  
Assurance  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460  
(202) 564-2949

FOR DEFENDANT, DAVISCO FOODS INTERNATIONAL, INC. D/B/A JEROME CHEESE  
COMPANY

Date: 18 MAR 13

A handwritten signature in dark ink, appearing to read "Will T Riebesell II", written over a horizontal line.

William T Riebesell II  
Plant Manager  
Jerome Cheese Company  
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